No. 82-5204

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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SUPREME COURT, U.S.

RT. REV. DR. EDWARD WAYLAND, APPELLANT

v.

REGISTRY OF DEEDS, SALEM,
CHARLES WALSH, AND RICHARD GREENE

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

MOTION TO DISMISS

REX E. LEE
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RT. REV. DR. EDWARD WAYLAND, PETITIONER

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Pursuant to Rule 16 of the Rules of this Court, the Solicitor General, on behalf of appellees Walsh and Greene, moves that the appeal be dismissed.

The pertinent facts may be summarized as follows: In 1981, after a Tax Court decision in favor of the Commissioner with respect to appellant's 1974 and 1975 income taxes had become final and the taxes had been assessed, appellee IRS Revenue Officer Charles Walsh filed a tax lien notice with respect to appellant's property in the office of the Registry of Deeds, Salem, Massachusetts. Thereafter, on November 6, 1981, appellant brought this suit in Massachusetts Superior Court, Essex County. In his complaint, appellant alleged that the tax lien in question was unconstitutional, and sought: (1) compensatory and punitive damages against Walsh and Richard Greene (an IRS office

auditor) [1]; (2) orders directing the officials of the Registry of Deeds to vacate the tax lien, and enjoining Walsh and Greene from taking any steps to enforce the lien (see J.S. App. B1).

Appellees removed the case to the United States District Court for the District of Massachusetts, and moved to dismiss the complaint. The magistrate to whom the motion was assigned recommended that it be granted on the ground that the court lacked subject matter jurisdiction in view of the provisions of Section 7421(a) of the Internal Revenue Code of 1954 (26 U.S.C.), the Anti-Injunction Act. (J.S. App. B1). The district court adopted the magistrate's recommendation (J.S. App. B). The court of appeals dismissed the appeal as frivolous (J.S. App. F). [2]

1. The appeal should be dismissed. Appellant points to, and we are aware of, no statute upon which this Court's appellate jurisdiction could be based.

2. Treating the appeal as a petition for certiorari (28 U.S.C. 2103), the petition should be denied. The decisions below were correct. Appellant's complaint, even when construed liberally, fails to allege any specific facts which, if true, would demonstrate a violation of his constitutional or statutory rights. It therefore fails to state a claim upon which relief

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[1] Appellant apparently named Greene as a defendant because he was under the impression that Greene had audited his 1974 and 1975 tax returns. In fact, however, Green's only connection with appellant related to appellant's tax liabilities for 1977-1979, tax years which are not involved in the present case.

[2] The court of appeals' order is not reported.

could be granted, and the district court properly dismissed it. See, e.g., Kiley v. Kurtz, 533 F. Supp. 465, 468-469 (D. Colo. 1982). See also Harlow v. Fitzgerald, No. 80-945 (June 24, 1982), slip op. 19 n.35 ("Insubstantial lawsuits undermine the effectiveness of Government as contemplated by our constitutional structure, and 'firm application of the Federal Rules of Civil Procedure' is fully warranted in such cases"). Moreover, to the extent appellant was seeking to enjoin enforcement of the government's tax lien, he was seeking to restrain collection of a tax, and his action was therefore barred by the provisions of the Anti-Injunction Act (Section 7421(a) of the Code). See, e.g., Bob Jones University v. Simon, 416 U.S. 725 (1974).

The appeal should be dismissed. Treating the appeal as a petition for a writ of certiorari, it is respectfully submitted that the petition should be denied.

REX E. LEE
Solicitor General

SEPTEMBER 1982